IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 401 OF 2006

Sanbasapa Tukaram Shinge .. Petitioner.

vs.

State of Maharashtra

& Anr. .. Respondents.

Dr. Y.M. Choudhry i/by Maharukh Adenwalla

for petitioner.

Mrs. A.S. Pai, APP., for Respondents.

CORAM : J.N. PATEL, AND

SMT. ROSHAN DALVI, JJ.

DATE : 13th September, 2006.

P.C.

. Heard.

2. The petitioner has approached this Court seeking a declaration that the petitioner was a juvenile on the date of committing the offence. The Petitioner has sought to quash the sentence passed against the petitioner in Sessions Case No. 447 of 1996. The Petitioner does not challenge his conviction. The Petitioner has further sought to have the authenticity of the documents showing the Petitioner’s date of birth to be 1.6.1980 verified

on leading evidence.

3. At the time the petitioner moved the Court of Sessions for seeking bail vide Bail Application No. 541 of 1996 in C.R. No. 27 of 1996 of Sahar Airport Police Station it was categorically stated by the Advocate for the Applicant that he is not challenging the order of the learned Juvenile Court which had an occasion to examine the correctness of the date of birth of the petitioner as claimed which by its order dated 5.2.1996 held that the petitioner is more than 18 years and hence the Juvenile Court was satisfied that he was not juvenile. We have gone through the order passed by the Juvenile Court. Further, we may also mention that the appeal pending against the order of conviction and sentence was also got separated in which the appellant's claim that he was a juvenile has been given up.

4. Further, we may also clarify that though the petitioner was born in the City of Mumbai, the petitioner or his parents are not in possession of any certificate or extract of the birth register from the records of the Municipal Corporation and reliance is merely placed on the school leaving certificate of B.M.C. school which by itself cannot be considered to be authentic. It is now settled law that if the petitioner contends that he was juvenile on the date of the commission of the

offence the burden lies on him to establish the said fact in the decision of the Supreme Court in the case of Ravinder Singh Gorkhi vs. State of U.P. reported in (2006) 5 SCC 584, we find that the petitioner has failed to establish that he was juvenile on the date of the commission of the offence. Further he has also given up his claim by not challenging the order passed by the Juvenile Board and it is a matter of record at various stages at the time when the petitioner sought bail and when he was tried before the Court and therefore by filing a writ petition the petitioner cannot circumvent the findings and seek directions from this Court to reexamine his case for the purpose of determination whether he was juvenile on the date of the commission of offence.

5. The learned counsel for the petitioner has drawn our attention to Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 which has been inserted by way of amendment with effect from 22.8.2006. The Petitioner desires to lead evidence to prove his date of birth. The Petitioner has not even prima facie shown his certificate of date of birth. In the judgment of the Apex Court in Gorkhi's case (supra) it has been laid down how the date of birth has to be proved by an accused who claims a juvenile status. The paramount requirement is the birth certificate. For

an accused born in Mumbai about two decades ago, the Municipal Birth Register is the only document to evidence such fact. A school leaving certificate from a register which does not record the date of birth of the students has been held to be insufficient evidence to prove this fact. Such is the case of the petitioner. The Advocate of the Petitioner contends that the Municipal Certificate is not the only document which is required to prove the Petitioner's birth and that oral evidence of his mother could be led. We must reject such a contention in view of the precise law now laid down by the Apex court to prove a fact exactly as has arisen in this case. The application of the Petitioner to be allowed to lead evidence under Section 7A of the Juvenile Justice Act as amended from 22.8.2006 is on the footing that the Amendment is after the date of the judgment supra. However since the Petitioner admittedly does not have and does not also desire to produce the birth certificate, his application for leading evidence, not in consonance with the requirements laid down in the judgement supra, is an exercise in futility.

6. We have taken into consideration the said provision and find that as the petitioner has not challenged the findings of the Juvenile Board and has given up his claim of being a juvenile and also did not agitate the same in the appeal preferred by

him which is pending in this Court, his claim under Section 7-A, in the light of the decision of the Supreme Court in Ravinder Singh Gorkhi's case, does not survive. We find no merit in the petition.

7. The petition is dismissed.

(J.N. Patel, J.)

(Smt. Roshan Dalvi, J.)